

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 7. Mediation Questionnaire

Instructions for this form: <https://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s) 23-16141

Case Name Robert F. Kennedy, Jr. v. Google, LLC et al.

Counsel submitting this form Scott J. Street

Represented party/parties Appellant Robert Kennedy, Jr.

Briefly describe the dispute that gave rise to this lawsuit.

Plaintiff/Appellant Mr. Kennedy, a candidate for president, is seeking declaratory and injunctive relief to prevent Defendants/Appellees Google LLC and YouTube, LLC, from using its government-induced and government-reliant medical misinformation policy to remove videos of his political speech from YouTube.

Mr. Kennedy applied for a temporary restraining order in the district court. The court denied the application. Because the district court addressed the merits, and concluded that Mr. Kennedy is not likely to prevail on the merits or suffer irreparable harm from Google's actions, Kennedy appealed the denial of the TRO and believes this Court has jurisdiction due to the rule that allows it to treat the denial of such an application as the denial of a motion for a preliminary injunction where it is clear how the district judge will rule and where further delay would prejudice the plaintiff/appellant.

Briefly describe the result below and the main issues on appeal.

The district court denied Mr. Kennedy's application for a temporary restraining order because it believed that, under *O'Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2023), it is virtually impossible to hold a technology company liable for violating an individual's First Amendment rights under the state action doctrine. The district court also concluded that a TRO would not serve the public interest because COVID-19 still exists and people could be harmed if Google is not allowed to censor Kennedy's speech about public health matters that the government deems misleading or dangerous.

The issues on appeal are:

- (1) Whether Kennedy must show a likelihood of success or simply raise serious questions about the merits to justify temporary relief in a First Amendment case involving political speech;
- (2) Whether the evidence Kennedy has produced shows that YouTube's medical misinformation policy is fairly attributable to the government;
- (3) Whether the district court erred in denying relief when it concluded that the balance of equities favored Kennedy and acknowledged that the public interest always favors promoting First Amendment rights.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Because this is an interlocutory appeal, the case is still pending in the district court. Mr. Kennedy must respond to Defendants' motion to dismiss by September 13 and file his preliminary injunction papers by September 27. A hearing is scheduled for both of those motions on November 7, 2023.

Signature /s/ Scott J. Street

(use "s/[typed name]" to sign electronically-filed documents)

Date Sept. 6, 2023

CERTIFICATE OF SERVICE

Robert F. Kennedy, Jr. v. Google, LLC, et al.
U.S. Court of Appeals for the Ninth Circuit, Case
No. 23-16141

At the time of service, I was over 18 years of age and not a party to this action. I am employed by JW Howard/Attorneys, LTD. in the County of San Diego, State of California. My business address is 600 West Broadway, Suite 1400, San Diego, California 92101.

On September 6, 2023, I caused **FORM 7. MEDIATION QUESTIONNAIRE** to be filed and served via the Court's Electronic Service upon the parties listed on the Court's service list for this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 6, 2023 at San Diego, California.

/s/ Dayna Dang
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